(2)

Supreme Court, U.S.
FILED
OCT - 1 1993
OFFICE OF THE CLERK

No. 93-358

IN THE

Supreme Court of the United States

October Term, 1993

C. MICHAEL JONES, et al.,

Petitioners,

v.

CATERPILLAR INC.,

Respondent.

On Petition For A Writ Of Certiorari To The Appellate Court Of Illinois, Fourth District

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Michael A. Warner
(Counsel of Record)
John T. Murray
SEYFARTH, SHAW, FAIRWEATHER
& GERALDSON
55 East Monroe Street
Suite 4200
Chicago, Illinois 60603
(312) 346-8000

Theodorre R. Johnson
CATERPILLAR INC.
100 Northeast Adams Street
Peoria, Illinois 61629
(309) 675-4278

Attorneys for Respondent.

BEST AVAILABLE COPY

18 pp

QUESTION RESTATED

Whether state law claims which are substantially dependent upon the interpretation and application of collective bargaining agreements are preempted by Section 301 of the Labor-Management Relations Act under Allis-Chalmers Corp. v. Lueck, 471 U.S. 202 (1985) and its progeny?

STATEMENT REQUIRED BY RULE 29.1

Caterpillar Inc. whose name was Caterpillar Tractor Co. at the time the instant lawsuit was filed, has no parent company. Its non-wholly-owned subsidiaries and affiliates are: Mitsubishi Caterpillar Forklift America Inc.; Advanced Technology Services Inc.; Rapidparts Inc.; Cyclean, Inc.; Innovative Steam Technologies; RR-1 Limited Partnership; Bio-energy Partners; Health Plan of Central Illinois Inc.; Peoria Medical Research Corporation; Balderson Inc.; DUECO, Inc.; Caterpillar Industrial Inc.; Material Handling Associates, Inc.; Advanced Filtration Systems Inc.; Energy Power Systems Australia Pty. Limited (Australia); Gough & Gilmour Holdings Pty. Limited (Australia); Girandole Pty. Limited (Australia); Matchparts N.V. (Belgium); Caterpillar Finance France S.A.; EDC European Excavator Design Center GmbH & Co. KG (Germany); EDC European Excavator Design Center Verwaltungs GmbH (Germany); Caterpillar Hungary Component Manufacturing Company Ltd. (Hungary); Tractor Engineers Limited (India); Hindustan Powerplus Limited (India); P.T. Natra Raya (Indonesia); Mec-Track S.r.L. (Italy); Shin Caterpillar Mitsubishi Ltd. (Japan); Caterpillar MHI Marketing Ltd. (Japan); Itoh Tekkosho Co., Ltd. (Japan); Hokuirku Caterpillar Mitsubishi Construction Equipment Sales, Ltd. (Japan); Shizuoka Caterpillar Mitsubishi Construction Equipment Sales, Ltd. (Japan); K-Lea Kabushiki Kaisha (Japan); D.O.M. Ltd. (Japan); Rental Sanwa Kabushiki Kaisha (Japan); Turboservices SDN BHD (Malaysia); Mistubishi Caterpillar Forklift Europe B.V. (Netherlands); Mitsubishi Caterpillar Forklift Asia Pte. Ltd. (Singapore); and Caterpillar Financial Services (U.K.) Limited.

TABLE OF CONTENTS

	Page(s)
QUESTION RESTATED	i
STATEMENT REQUIRED BY RULE 29.1	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
STATEMENT OF THE CASE	2
PROCEEDINGS BELOW	4
REASONS FOR DENYING THE WRIT	7
CONCLUSION	13

TABLE OF AUTHORITIES

Cases	Page(s)
Allis-Chalmers Corp. v. Lueck, 471 U.S. 202 (1985)	1, 7, 8, 12
Berda v. CBS, Inc., 881 F.2d 20 (3d Cir.),cert. denied, 493 U.S.1062 (1990)	9, 10
Caterpillar Inc. v. Williams, 482 U.S. 386 (1987)	7, 9, 12
Franchise Tax Bd. v. Construction Laborers Vacation Trust, 463 U.S. 1, 23 (1983)	7
Lingle v. Norge Division of Magic Chef, Inc., 486 U.S. 399 (1988)	7
Lopez v. Continental Can Co., 961 F.2d 147 (9th Cir. 1992)	9-11
Metropolitan Life Ins. Co. v. Taylor, 481 U.S. 58, 64 (1987)	7
Ryherd v. General Cable Co., 124 Ill. 2d 418, 530 N.E.2d 431 (1988)	8
Schacht v. Caterpillar Inc., 213 Ill. App. 3d 169, 571 N.E.2d 1215 (3d Dist. 1991), appeal denied, 141 Ill. 2d 560, 580 N.E.2d 134 (1991), cert. denied, 112 S. Ct. 1306 (1992)	4
Seefeldt v. Millikin National Bank, (1987), 154 Ill. App. 3d 715, 719, 506 N.E.2d 1052, 1055	5
Smith v. Colgate-Palmolive Co., 943 F.2d 764 (7th Cir. 1991)	9
Teamsters v. Lucas Flour Co., 369 U.S. 95, 103-04 (1962)	7
Textile Workers Union v. Lincoln Mills, 353 U.S. 448, 456 (1957)	7
United Steel Workers v. Rawson, 495 U.S. 362 (1990)	7
White v. National Steel Corp., 938 F.2d 474 (4th Cir.), cert. denied, 112 S. Ct. 454 (1991)	10

No. 93-358

IN THE

Supreme Court of the United States

October Term, 1993

C. MICHAEL JONES, et al.,

Petitioners,

v.

CATERPILLAR INC.,

Respondent.

On Petition For A Writ Of Certiorari To The Appellate Court Of Illinois, Fourth District

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

In this case, the Illinois Court of Appeals held that the claims of current and former employees who were covered by the terms of collective bargaining agreements throughout their employment and who were challenging their layoffs under the terms of those agreements on the basis that the layoffs violated their state contractual rights were preempted by Section 301 of the Labor-Management Relations Act of 1947 ("LMRA"). This holding is simply a correct application of the principles of Allis-Chalmers Corp. v. Lueck, 471 U.S. 202 (1985), and its progeny to the particular facts of this case. It presents no issue that is appropriate for review by this Court.

STATEMENT OF THE CASE

Petitioners were employed by Caterpillar Inc. ("Caterpillar") at various production plants in Illinois. As production employees, Petitioners were all subject to collective bargaining agreements negotiated by their selected bargaining agents, in most cases the United Automobile Workers (UAW) (Pet. for Cert. at 5; R. C1423-24, C3585-86, C3839-40, C3946-47).[1] The collective bargaining agreements established the basic terms and conditions of employment for covered employees, including the layoff and recall terms.

At various times in their employment, Petitioners moved into the apprentice classification. When Petitioners entered that classification, however, they continued to be covered by the collective bargaining agreements in effect at their respective facilities. (Pet. for Cert. at 5; R. C1038, C1050-51, C1054-55). As noted in the decision below, "[w]hile serving as apprentices, [Petitioners] continued to hold membership in the union and to pay union dues" (A-2-A3).[2]

---

[1]Although most of Petitioners worked in facilities represented by the UAW (R. C1423,-24, C3585-86, C3839-40, C3946-47), a few of Petitioners were represented by other unions (R. C3717-18). At all relevant times, however, all of Petitioners were represented by one of these labor organizations and each was covered by a collective bargaining agreement negotiated on their behalf by their particular labor organization.

[2]The undisputed record evidence amply supports this finding. For example, in the Peoria area, Article 1 of the UAW Local Supplement specifically provides that "apprentices" (other than patternmakers) are included in the bargaining unit defined by the National Labor Relations Board (R. C4048). The apprentice job titles and the applicable wage rates for apprentices at the Peoria facilities

Petitioners also concede this point: "That the plaintiffs in the case at bar were union members and covered by a collective bargaining agreement . . . is not in dispute" (Pet. for Cert. at 5).

In the early 1980's, Caterpillar began to experience a sharp decline in its business and during the next several years that erosion in business caused a series of layoffs at virtually all of the Company's facilities (R. C3587, C3948). In fact, these economic difficulties resulted in the closure of a number of facilities, such as Davenport, Iowa, Milwaukee, Wisconsin and San Leandro, California, among others. In initially carrying out the layoff at the UAW plants, Caterpillar followed the seniority-based reduction-in-force procedures set out in Article 13 of the Central Agreement and the related provisions of the Local Agreements (R. C3588-90, C3718, C3842-43, C3948). The Patternmaker layoffs were likewise carried out in accordance with the seniority-based reduction-in-force procedures of the Patternmakers contract (R. C3718). Pursuant to these procedures, a large number of apprentices were removed from their respective training programs (R. C3588).

The reductions of apprentices were the subject of numerous grievances under the collective bargaining agreements, including grievances by a number of Petitioners

---

are set out in the Peoria Area Supplementary Rate Schedule in the Central Agreement (R. C3947, C4041-42). For purposes of applying the seniority provisions of the agreement, the apprenticeship program constitutes the Factory Training Major Group under Article 5 (Seniority) of the Local Supplement (R. C3947-48, C4055-58). Similar provisions are found in the Decatur and other UAW-Caterpillar local supplements (e.g., R. C3587, C3600, C3605-09). Similarly, the Patternmakers-Caterpillar contract provides that the Patternmakers Union is "the sole bargaining agent for all patternmakers and patternmaker apprentices" (R. C3717-18, C3798).

and were the subject of negotiations between Respondent and the various local unions of the UAW (R. C3589, C3842-43, C3948-49, C4087-4111). These grievances included grievances by apprentices at East Peoria protesting the 1981 layoffs and downgrades. Although Caterpillar and the UAW negotiated certain modifications to the methodology of reducing apprentices in certain locations (such as East Peoria), the continuing economic decline of the company required a continued reduction in force throughout Caterpillar's production facilities, including among the apprentices (R. C3587, C3948). Petitioners were among that group affected by the economic decline (R. C1061, C1354-58). They were each laid-off or reduced in classification at various times during the period between 1980 and 1985.

PROCEEDINGS BELOW

In 1986, the Petitioners filed a complaint in Illinois state court challenging their layoffs or downgrades and their consequent removals from the apprenticeship programs. Petitioners claim that their layoffs constituted "terminations" in violation of "Apprenticeship Agreements" ("AA") they signed upon entry into the apprentice program. Petitioners later amended their Complaint to add State-law tort claims for misrepresentation. Following extensive pretrial proceedings, Caterpillar moved for summary judgment in December, 1991, based on the decision of the Illinois Appellate Court in Schacht v. Caterpillar Inc., 213 Ill. App. 3d 169, 571 N.E.2d 1215 (3d Dist. 1991), appeal denied, 141 Ill. 2d 560, 580 N.E.2d 134 (1991), cert. denied, 112 S. Ct. 1306 (1992), holding that the identical claims of a class of Caterpillar apprentices were preempted by Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185. The trial court granted Caterpillar's motion "on the basis of the authority cited in the Schacht decision." (A-16).

Petitioners appealed to the Illinois Appellate Court for the Fourth District. After briefing and oral argument, the appellate court upheld the entry of summary judgment (A-1 - A-14). The appellate court noted that the petitioners availed themselves of the benefits of the collective bargaining agreements and that their employment remained at all times subject to the collective bargaining agreements. Accordingly, the court found that the apprenticeship agreements could not be viewed in isolation and that the terms of the Plaintiffs' employment would have to be extracted from both the apprenticeship agreements and the collective bargaining agreements. The appellate court held:

> [I]n determining whether plaintiffs' termination from the apprenticeship program was in violation of the terms of the apprenticeship agreement, the nature of the relationship between the apprenticeship agreement and the collective-bargaining agreement must necessarily be examined. This will require an interpretation of the collective-bargaining agreement which is governed by federal law and preempted by section 301(a).
>
> * * * *
>
> As to the fraudulent misrepresentation count, one of the elements of fraudulent misrepresentation is that the injured party justifiably relied on the false statement. (Seefeldt v. Millikin National Bank, (1987), 154 Ill. App. 3d 715, 719, 506 N.E.2d 1052, 1055.) In determining whether reliance is reasonable, courts must look to all the relevant circumstances

> surrounding the alleged misrepresentation. Seefeldt , 154 Ill. App. 3d at 719, 506 N.E.2d at 1055.) Since defendant alleges plaintiffs were still covered by the collective-bargaining agreement which contained a provision for layoffs, it would seem necessary that to properly review plaintiffs' claims the court would need to evaluate the collective-bargaining agreement to determine whether it was reasonable for plaintiffs to believe that they could not be terminated from the apprenticeship program for economic reasons. This claim therefore is also preempted.

(A-10 - A-12). On this basis, the appellate court affirmed the circuit court's entry of summary judgment for Caterpillar.[3] In the alternative, the court noted that the claims would be preempted in any event because the resolution of Caterpillar's defenses would also require the interpretation of the collective bargaining agreements. (A-11). Petitioners petitioned for leave to appeal to the Illinois Supreme Court. That Petition was denied. (A-15)

---

[3]It is uncontroverted that Petitioners did not meet the prerequisites to suit under Section 301. For example, Petitioners did not exhaust their contractual grievance remedies (as required under Clayton v. International Union, UAW, 451 U.S. 679 (1981)) nor did they file their suit within six months of the alleged breach (Del Costello v. International Brotherhood of Teamsters, 462 U.S. 151 (1983)). Thus, treating this case as one brought under Section 301, the lower courts properly granted summary judgment in Caterpillar's favor.

REASONS FOR DENYING THE WRIT

Section 301 of the Labor-Management Relations Act, and the remedies available pursuant to that section, provide the exclusive source of law for claims, the resolution of which involves a collective bargaining agreement. In Textile Workers Union v. Lincoln Mills, 353 U.S. 448, 456 (1957), this Court held that the Congress, through LMRA Section 301, authorized federal courts to create a uniform body of federal common law relating to collective bargaining agreements "which the courts must fashion from the policy of our national labor laws." As further explained in Teamsters v. Lucas Flour Co., 369 U.S. 95, 103-04 (1962), "[t]he possibility that individual contract terms might have different meanings under state and federal law would inevitably exert a disruptive influence upon both the negotiation and administration of collective agreements." In order to effectuate this mandate, the Court has established Section 301 as a uniquely broad source of federal common law with a "preemptive force ... so powerful as to displace entirely any state cause of action" within its scope. Metropolitan Life Ins. Co. v. Taylor, 481 U.S. 58, 64 (1987) (quoting Franchise Tax Bd. v. Construction Laborers Vacation Trust, 463 U.S. 1, 23 (1983)). As a result of this strong federal policy, this Court has made clear, in a long line of cases, that Section 301 of the LMRA preempts a state law claim that is "substantially dependent upon analysis of the terms of an agreement made between parties to a labor contract." Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 220 (1985). See, e.g., United Steel Workers v. Rawson, 495 U.S. 362 (1990); Lingle v. Norge Division of Magic Chef, Inc., 486 U.S. 399 (1988); Caterpillar Inc. v. Williams, 482

U.S. 386 (1987).

In Ryherd v. General Cable Co., 124 Ill. 2d 418, 530 N.E.2d 431 (1988), the Illinois Supreme Court, following this standard, reaffirmed that, regardless of how a plaintiff's claims are couched in the complaint, Illinois courts will consider a state claim to be preempted by Section 301 if "the validity of the state claim is 'inextricably intertwined with consideration of the terms of the labor contract.'" Ryherd, 530 N.E.2d at 434 (quoting Allis-Chalmers Corp. v. Lueck, 471 U.S. 202 (1985)). Both the trial court and the appellate court accepted and applied this Court's established standard in this case. In reviewing the particular facts of this case under that standard, the lower courts concluded that the resolution of the Petitioners' claims would indeed require analysis and interpretation of the terms of collective bargaining agreements. Accordingly, the courts concluded that Petitioners' claims are preempted under Section 301.

Petitioners contend that the holding of the Illinois Appellate Court creates a conflict with decisions of other courts on the issue of whether Section 301 can preempt a state contract claim based on an agreement alleged to be separate and distinct from the collective bargaining contract. None of the cases cited by Petitioners, however, establish that there is a conflict on the applicable legal principles. Instead, these cases simply come to different conclusions based upon their particular facts.

The basis for the purported conflict is alternatively stated in the Petitioners' submission, as follows:

> This Court is again asked to address the question of whether federal preemption, under § 301(a) of the Labor Management Relations Act, can be found to arise from defenses raised in an employer's pleadings, where the plaintiffs' claims are premised solely upon state law. This question is reflected in opposing views as to the applicability of this Court's opinion in Caterpillar Inc. v. Williams, 482 U.S. 386, 107 S. Ct. 2425, 96 L. Ed. 2d 318 (1987).

(Pet. for Cert. at 5).

In Williams, this Court held that the question whether a claim is "completely preempted" by Section 301 so as to permit removal of the case to federal court based upon federal question jurisdiction must be determined solely from the face of the complaint and cannot depend upon the anticipated defenses. Petitioners note that the decision below and at least one other appellate court decision -- by the Seventh Circuit -- have so limited the Williams holding. (Pet. for Cert. at 7-8, citing Smith v. Colgate-Palmolive Co., 943 F.2d 764 (7th Cir. 1991)). Petitioners also cite to three appellate court cases purportedly holding that Williams applies not only to the question of "complete preemption" for purposes of removal, but also to preemption on the merits. (Pet. for Cert. at 8, citing Berda v. CBS Inc., 881 F.2d 20 (3d Cir. 1989), cert. denied, 493 U.S. 1062 (1990); Lopez v. Continental Can Co., 961 F.2d 147

(9th Cir. 1992); and White v. National Steel Corp., 938 F.2d 474 (4th Cir.), cert. denied, 112 S. Ct. 454 (1991)). For a number of reasons, however, Petitioners arguments raise no appropriate grounds for a grant of certiorari in this case.

First, the result below does not depend upon whether preemption can be found in the asserted defenses to the claim. Although the appellate court did hold that Respondent's defenses would require interpretation of the collective bargaining agreement, this was not the primary grounds upon which the decision rested. Rather, the court held that an interpretation of the collective bargaining agreement would be required to resolve Petitioners' claims for breach of contract and misrepresentation irrespective of Respondent's affirmative defenses. For example, the court stated that proof of justifiable reliance -- an essential element of Petitioners' misrepresentation claim -- would necessarily require an analysis of the collective bargaining agreement as a part of the surrounding circumstances.

Second, there is no conflict of law in the cases cited by Petitioners. Rather, they simply involve the application of the Allis-Chalmers rule that Section 301 preempts a state law claim which is "substantially dependent upon the analysis of the terms of an agreement made between parties to a labor contract" to different facts. In the Fourth Circuit case cited by Petitioners, White v. National Steel Corp., 938 F.2d 474 (4th Cir.), cert. denied, 112 S. Ct. 454 (1991), the court held that an alleged individual agreement made with regard to a management position which was not subject to the collective bargaining agreement was not, on its facts, sufficiently dependent upon the analysis of the terms of a collective bargaining agreement to meet the Allis-Chalmers standard. Similarly, in the Third Circuit case cited by Plaintiffs, Berda v. CBS, Inc., 881 F.2d 20 (3d Cir.), cert.

denied, 493 U.S. 1062 (1990), the court held that the Allis-Chalmers standard was not met with respect to an individual contract based upon promises made during the hiring interview and which had induced the plaintiff to accept employment prior to the time that he was subject to the collective bargaining agreement. Finally, in the Ninth Circuit case, Lopez v. Continental Can Co., 961 F.2d 147 (9th Cir. 1992), the court simply held that a union employee's statutory claim that her employer fraudulently concealed information about a safety risk was not preempted by Section 301.

In this case, the appellate court applied the same basic standard applied in each of the cases cited by Petitioners. The uncontroverted facts showed that the Plaintiffs were covered by the collective bargaining agreement at the time they entered the apprentice program, when the alleged individual agreements were signed, and at all times thereafter. Moreover, as found by the district court, there is nothing in either the alleged individual agreements or the collective bargaining agreement which excepts the employees in the apprentice program from the downgrade, layoff and recall provisions of the collective bargaining agreement. Thus, the Illinois Appellate Court's conclusion that "in determining whether plaintiffs' termination from the apprenticeship program was in violation of the terms of the apprenticeship agreement, the nature of the relationship between the apprenticeship agreement and the collective-bargaining agreement must necessarily be examined" cannot be contested on the facts and presents a different issue than in White, where the promise pertained to a non-unit position, Berda, where the plaintiff was not subject to a collective bargaining contract at the time the individual agreement was formed, and Lopez, where the Plaintiff brought a statutory claim. In short, the purported conflict is simply an application

of the same rule of law to a different set of facts with a correspondingly different result. Such a conflict does not require or justify Supreme Court review.

Finally, Petitioners argument that this Court has not determined whether a federal labor issue arising out of a defense may preempt a state law claim is simply wrong. In Allis-Chalmers Corp. v. Lueck, 471 U.S. 202 (1985), and other Supreme Court cases cited by Petitioners themselves, this is precisely what occurred. Numerous cases have arisen in the state courts or in the federal courts by virtue of diversity jurisdiction wherein this Court has uniformly recognized that a state law claim may be preempted when a defense requires interpretation of a collective bargaining agreement. Moreover, in Caterpillar Inc. v. Williams, 482 U.S. 386 (1987), this Court expressly recognized that, where a case is not properly removed because a federal question does not appear on the face of the complaint, preemption defenses, including the Section 301 defense, "are questions that must be addressed in the first instance by the state court in which respondents filed their claims." Williams, 482 U.S. at 398, n.13. That is precisely what occurred in this case.

Not one of the Circuit Court cases featured by Petitioners holds that a federal defense may not preempt a state law claim. At most, these cases simply hold that, on the particular facts in the case, the asserted defense is insufficient to invoke federal preemption. Again, therefore, there is no dispute as to the applicable legal principles and no conflict requiring resolution by this Court.

In summary, this case involves nothing more than a straightforward application of both long-standing and recent precedents of this Court. There are no conflicts which require resolution and the case meets none of the other standards necessary to justify the

exercise of this Court's supervisory powers. The Petition should be denied.

CONCLUSION

For the reasons stated, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

CATERPILLAR INC.

Michael A. Warner
(Counsel of Record)
John T. Murray
SEYFARTH, SHAW, FAIRWEATHER
& GERALDSON
Suite 4200
55 East Monroe Street
Chicago, Illinois 60603
(312) 346-8000

Theodore R. Johnson
CATERPILLAR INC.
100 Northeast Adams Street
Peoria, Illinois 61629
(309) 675-4278